

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
445 12th Street SW, Washington, DC 20554  
To the Attention of: Distinguished Lady Marlene H. Dortch  
Acting Director of the Office of Communications Business Opportunities (OCBO)

In the Matter of	)	
Review of Dominant versus	)	CC Docket No. 01-337 &
Non-dominant Telecommunication	)	CC Docket No. 01-338
Services	)	

**COMMENTS OF THE 21st CENTURY INFRASTRUCTURES CONSORTIUM IN REGARDS TO  
MUNICIPALITIES AND PUBLIC UTILITY ENTITIES ENTERING THE BROADBAND MARKETS**

The 21st Century Infrastructures Consortium (21st CiC) files this comment in regards to the growing interests of municipalities and public entities to enter the Fiber-To-The-Home and Fiber-To-The-Desk markets.

We are of the opinion that a government or lower-government entity should be prevented to take advantage of its tax exemption, and access to tax dollars to compete with businesses. It would be unfair and very unpleasant having a municipality or state-authority competing with businesses and private suppliers. In a 1993 report "Unfair Government Competition against Small Business", Dennis Polhill wrote, "[u]nfair Competition adversely affects all Americans. Small businesses are most vulnerable. When jobs are lost, the poor, the unemployed, and women are especially damaged. When private enterprises are replaced with less efficient government enterprises, national productivity and competitiveness are adversely impacted. When the tax base is diminished, all taxpayers are injured".

(<<http://i2i.org/Publications/IP/PoliticsandGovernment/12-1993.PDF>>)

In the report, Polhill also reports about "Dash About", a small transportation company, with the intention to provide inter-city and intra-city transportation to a six-county region in northeast Colorado. However, at the same time the Northeast Colorado Transportation Authority started as a government agency and subsequently became a non-profit group. As such, it did not have to pay taxes and had several unfair advantages over Dash About such as lower insurance premiums (NECTA pays less than half the insurance as Dash About). NECTA rapidly expanded. Soon they had 30 vehicles, an annual budget of \$285,000, and on the verge of forcing Dash About out of business. Dash About had only three vehicles and no business on inter-city routes. Dash About was losing money. Their hope was that they could persuade NECTA to contract out some routes to them, but they turned them down because she could not come up with exorbitant bond money (120% of a given contract). On top of that, NECTA was encroaching on Dash About's intra-city routes - the only real profitable routes Leas had.

Many such unfair competition issues are reality. It will not be more different with the Fiber-To-The-Home (FTTH) and Fiber-To-The-x (FTTx) industry, which is, in fact, another form of transportation. Municipalities are encouraged by new FTTH vendor groups such as MuniConsortium to invest, operate and even operate the FTTH networks. Many municipalities are already laying FTTH/FTTD infrastructures, albeit in small proportions. Municipalities and Public utility companies should be barred from entering in the FTTx industries, simply because the market could otherwise become distressed and full of unfair acts.

The 21st Century Infrastructures Consortium, urges the Federal Communications Commission, as well as the Federal Trade Commission, to take action against unfair competition. It is impossible to imagine what sort of "autocratic" beast will be created when municipalities and public utilities would be allowed to enter the brand-new FTTx industry. It automatically will lead these entities to prevent other -small/medium size- businesses, to enter the very same field. One cannot -and never should- be the judge, jury and executioner at the same time. One should also not be the owner of the right-of-way, highway, and the transporting vehicles itself. The comment, often made by municipalities, that "if they don't do it, nobody will do it", is not a fair defence either. The railways were laid by private investors; air travel is organized, managed, and exploited by airline and travel corporations; the automobile industry is up and running, all without help or assistance of the government. Besides that, the FTTx industry just now is in the starting blocks, and is believed to take off in the next year or so in a big way. Of course, above mentioned industries heavily depend on rights-of-way and higher-level ordinance, but it does not mean that the governments, or quasi-governments, should own and operate these industries, or even regulate it. Today's CATV and Telco systems are not owned by the municipalities or public utility companies either, thank to the success of open market formula.

How can a municipality promise "neutrality and objectivity" to "competitive" operators in regards to matters such as rights-of-way and all sorts of market-entry opportunities? The conflict of interest is a major issue that should not be underestimated. Just remember the transportation competition between Lea and the NECTA, as described above.

The solutions, given by 21st CiC, are:

- Let the municipalities and public utilities organize/build/operate the FTTx grid to governmental buildings, and institutes, but not to the commercial and residential markets.
- FTTH/D/x operators and municipalities should decide what stance to take, and eventually co-design the city FTTx grid.
- FTTx operations, and exploitation, in all its levels and facets, should be left to specialist non-governmental, non-related, operators.
- The 21st CiC already offered free-of-charge assessments and feasibility studies, and offers to link municipalities with FTTx operators or introduce them to each other. 21st CiC members and non-members alike.
- In case a municipality wants FTTx rollouts to take place in their area, they should be advised by the FTC and FCC to call for a tender, or request for proposals, and business models, sent out to all known FTTx organisations and FTTH operators.
- Best is that municipalities should not at all get involved with this particular industry, as much as they do not rule -or do not care about- who drives an automobile in their city's streets, and what kind of automobile that may be.

Our organization is worried about unfair competition, or even "killing" market opportunities by monopolistic and dominant entities. Municipalities, even when they promise to build an open-access network, should not at all be involved with the FTTx industry. They should be held responsible for fair treatment of all parties that are interested in FTTx rollouts, in their city or in municipalities where they can call the rights-of-way issues.

CATV and Telco system upgrades, to enable internet via those systems, were not ordered by regulations and by municipalities flexing their muscles towards them. We should agree to let the markets do the work, not to let the works do the market.

Respectfully submitted on behalf of our members,

**21st CENTURY INFRASTRUCTURES CONSORTIUM**

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